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Human rights situations that require the Council's attention

Albania,* Andorra,* Austria,* Azerbaijan,* Bangladesh,* Belgium, Bosnia and Herzegovina,* Bulgaria,* Canada,* Croatia, Cyprus,* Czechia,* Denmark,* Estonia,* Finland,* France,* Georgia, Germany, Greece,* Hungary, Iceland,* Ireland,* Italy,* Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Maldives,* Malta,* Monaco,* Montenegro,* Netherlands,* Poland,* Portugal,* Romania,* Slovakia, Slovenia, Spain, Sweden,* the former Yugoslav Republic of Macedonia,* Turkey,* Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution

37/... Situation of human rights in Myanmar

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and reaffirming all relevant Human Rights Council and General Assembly resolutions and decisions on the situation of human rights in Myanmar, the most recent being Assembly resolution 72/248 of 24 December 2017, Council resolutions 34/22 of 24 March 2017 and S-27/1 of 5 December 2017, and Council decision 36/115 of 29 September 2017,

Welcoming the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, including the report submitted to the Human Rights Council at its current session,[1] and the cooperation of the Government of Myanmar with the Special Rapporteur, including the facilitation of her visits to some parts of the country from 10 to 21 July 2017, while expressing deep concern at the decision of the Government to deny the Special Rapporteur access for a subsequent visit in January 2018,

Welcoming also the cooperation extended by the Governments of Bangladesh and Thailand, allowing in this context the Special Rapporteur to visit these two neighbouring countries from 10 to 30 January 2018, while calling upon the Government of Myanmar to resume its cooperation with the Special Rapporteur without delay,

Welcoming further the work of the independent international fact-finding mission on Myanmar and its oral updates to the Council, while deeply regretting that the Government of Myanmar is not cooperating with the fact-finding mission, and urging the Government to grant it full, unrestricted and unmonitored access to all areas and interlocutors,

* State not a member of the Human Rights Council.

[1] A/HRC/37/70.

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Recalling the requests made by the General Assembly in its resolution 72/248 that the Government of Myanmar grant full, unrestricted and unmonitored access for the fact-finding mission, other human rights mechanisms and relevant United Nations agencies to independently monitor the human rights situation, and to ensure that individuals have unhindered access to and can communicate with the United Nations and other human rights entities, without fear of reprisal, intimidation or attack,

Acknowledging the request made by the United Nations High Commissioner for Human Rights during the special session of the Human Rights Council on the situation of human rights of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar that the Council, in view of the scale and gravity of the allegations, consider making a recommendation to the General Assembly that it establish a new impartial and independent mechanism, complementary to the work of the fact-finding mission and the recommendation made by the Special Rapporteur in her report on the situation of human rights in Myanmar,[2] that a structure be established, under the auspices of the United Nations, supported by the necessary expertise, for a duration of three years, to investigate, document, collect, consolidate, map and analyse evidence of human rights violations and abuses, and to maintain and prepare evidence in a depository to support and facilitate impartial, fair and independent criminal proceedings in national or international courts or tribunals in accordance with international law,

Acknowledging with grave concern the statements made by the Secretary-General, on 26 February 2018, the High Commissioner, on 7 March 2018, and the Assistant Secretary-General for Human Rights, on 6 March 2018, on the situation of human rights in Rakhine State, in which they referred to ethnic cleansing in Myanmar,

Welcoming the adoption of General Assembly resolution 72/248, in which the Assembly requested the Secretary-General to appoint a special envoy on Myanmar and to offer assistance to the Government of Myanmar,

Stressing that States have the primary responsibility for the promotion and protection of human rights,

Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations and abuses of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to end impunity,

Recalling also Human Rights Council resolutions 5/1, on institution-building of the Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Expressing concern at the reports of ongoing intimidation and violence against the remaining Rohingya population and other minorities in Myanmar,

1. *Welcomes* the positive developments in Myanmar towards political and economic reform, and calls upon the Government of Myanmar, including the security forces, to ensure that democratization, national reconciliation, good governance and the rule of law prevail, and urges the Government to take further steps to promote and protect human rights and combat corruption, and to address outstanding concerns;

2. *Calls upon* all actors to consolidate the democratic transition with full respect for the rule of law and human rights by bringing all national institutions, including the military, under civilian control, and to ensure the recognition of all ethnic and religious minorities and their equitable inclusion in the political process;

3. *Welcomes* the progress made towards the principles of a future democratic federal union during the Twenty-first Century Panglong Conference in May 2017 and the signing by the New Mon State Party and the Lahu Democratic Union of the Nationwide Ceasefire Agreement on 13 February 2018, bringing the number of signatories to the

[2] A/HRC/34/67.

Agreement to 10, while expressing concern at the violations of the Agreement against signatory groups and the use of the Unlawful Associations Act to arrest members of ethnic and religious minorities on an arbitrary basis, and calling for further steps, including an immediate end to the violence and of all violations and abuses of international human rights law and violations of international humanitarian law, as applicable, in northern Myanmar, the granting of immediate, safe and unhindered humanitarian access, including to areas controlled by ethnic armed groups, in particular in Kachin and Shan States, and enhanced efforts to reach out to those ethnic armed groups that have not yet signed the Agreement, and the pursuit of an inclusive and comprehensive national political dialogue that ensures the full and effective participation of women and young people, as well as civil society, with the objective of achieving lasting peace;

4. *Recognizes* the first steps taken by the Government of Myanmar to address the underlying causes of the situation in Rakhine State, including by setting up the Central Committee for the Implementation of Peace, Stability and Development in Rakhine State and the Advisory Commission on Rakhine State, established on 5 September 2016 at the behest of the State Counsellor of Myanmar, Daw Aung San Suu Kyi, and chaired by former Secretary-General Kofi Annan, and welcomes the announcement by the Government of Myanmar that it would fully implement the recommendations of the final report of the Advisory Commission and the setting up of an implementation committee and an advisory board to that end, while urging the Government to implement the recommendations of the Advisory Commission without delay and with determination, in full consultation with all the communities concerned;

5. *Calls upon* the international community and regional organizations to provide support, including humanitarian and development assistance, to the Government of Myanmar for the implementation of the recommendations of the Advisory Commission on Rakhine State, including the recommendations on an inclusive, transparent and efficient citizenship verification process that provides participants with all benefits, rights and freedoms associated with citizenship, ensuring equal access to essential social services for all Myanmar residents, including education and health care, and providing freedom of movement for them, and on finding sustainable solutions in building intercommunal harmony towards lasting peace, stability and prosperity for the benefit of the whole population;

6. *Calls upon* the Government of Myanmar to eliminate statelessness and systematic and institutionalized discrimination against members of ethnic and religious minorities, including by addressing the root causes of discrimination, in particular relating to the Rohingya minority, by, inter alia, reviewing the 1982 Citizenship Law, which has led to deprivation of human rights, by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights by allowing for self-identification, by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control, by lifting local orders restricting the right to freedom of movement and restricting access to civil registration, health services and education services, and by facilitating durable solutions that allow internally displaced persons, refugees and camp populations to voluntarily return to their places of origin in safety, security and dignity, and to ensure non-discriminatory access to basic social services in accordance with international law;

7. *Strongly condemns* the reported widespread, systematic and gross human rights violations and abuses committed in Rakhine State since 25 August 2017 and, while reiterating its condemnation of attacks carried out by the Arakan Rohingya Salvation Army and other militant groups, expresses its deepest concern about the disproportionate response of the military and the security forces and deplores the serious deterioration of the security, human rights and humanitarian situation, the exodus of almost 700,000 Rohingya into Bangladesh and the subsequent depopulation of northern Rakhine State, and calls upon the Myanmar authorities to ensure that those responsible for human rights violations and abuses are held accountable;

8. *Calls for* a full and independent investigation of the reports of systematic human rights violations and abuses committed, as reported by various United Nations bodies, including the Human Rights Council independent international fact-finding mission, expresses the urgent need to ensure that all those responsible for crimes related to violations and abuses of international human rights law are held to account through credible and independent national or international criminal justice mechanisms, and stresses the need to pursue practical steps towards this goal while acknowledging the authority of the Security Council under the Charter of the United Nations, including the authority to refer the situation in Myanmar to the International Criminal Court;

9. *Strongly urges* the Government of Myanmar to lift the curfew order in Rakhine State, to ensure freedom of movement and the safety and security of all persons without discrimination, to grant and facilitate immediate, safe and unhindered and sustained humanitarian access to United Nations agencies and their partners, and other domestic and international non-governmental organizations, to provide gender-responsive humanitarian assistance to all people in need of assistance in order to save lives and preserve human dignity throughout the country, to grant cooperation partners access without delay to permit the full resumption of aid programmes, to grant access to independent observers and representatives of the media, without fear of reprisals, and to safeguard those who report abuses;

10. *Welcomes* the signing by the Governments of Myanmar and Bangladesh of an "arrangement on the return of displaced persons from Rakhine" on 23 November 2017 and of a "physical arrangement for the repatriation of displaced Myanmar residents from Bangladesh" on 16 January 2018 as important first steps towards the safe, voluntary, dignified and sustainable return and repatriation of Rohingya refugees, acknowledges the cooperation of Bangladesh with the Office of the United Nations High Commissioner for Refugees, while urging all parties to invite the Office of the High Commissioner, the International Organization for Migration and other relevant international organizations to fulfil their mandates and to participate fully in the Joint Working Group on the Repatriation of Displaced Myanmar Residents from Bangladesh and in the implementation of the returns process to ensure effective and sustainable implementation, in accordance with international law;

11. *Acknowledges* the measures taken by the Government of Myanmar to prepare for the voluntary return of Rohingya refugees from Bangladesh, including through the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine, while stressing the need for the creation of the conditions for safe, voluntary, dignified and sustainable return, with international oversight preferably to their places of origin, providing returnees with freedom of movement, unimpeded access to livelihoods, social services, including health services, education and shelter, and compensating them for all losses, acknowledges also the importance of international oversight and monitoring of these processes, while noting with concern the continued departure of members of the remaining Rohingya population for Bangladesh, and calls for an end to the intimidation of those displaced and taking shelter in no man's land on the Myanmar-Bangladesh border;

12. *Strongly calls upon* the Government of Myanmar to expedite the safe, voluntary, dignified and sustainable return of all internally displaced persons in conditions of safety and dignity to their homes in Myanmar, including the approximately 120,000 Rohingya internally displaced persons currently in camps near Sittwe, in central Rakhine;

13. *Recognizes* the admission by the Myanmar military for the first time of the extrajudicial killing of 10 Rohingya villagers in Inn Din village, northern Rakhine State, while expressing concern that the Government of Myanmar has rejected credible reports of atrocities, reiterating grave concerns that reporters investigating the Inn Dinn killings have been jailed, and reiterating its calls upon the Myanmar authorities to cooperate with independent, credible, and effective investigations into all allegations of human rights abuses and violations, including the gender dimension of such abuses and violations;

14. *Deeply regrets* that the Government of Myanmar has to date refused to cooperate with the independent international fact-finding mission appointed by the President of the Human Rights Council to establish the facts and circumstances of the

alleged recent human rights violations by military and security forces and human rights violations and abuses in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual and gender-based violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims;

15. *Calls upon* the Government of Myanmar to cooperate fully with the fact-finding mission, including by making available information on the terms of reference and the findings of domestic investigations and other relevant information, and stresses the need for the fact-finding mission to be granted full, unrestricted and unmonitored access to all areas and interlocutors;

16. *Reiterates* the need for the fact-finding mission to be provided with all the resources and expertise necessary to carry out its mandate, including forensic science expertise and expertise on sexual and gender-based violence, to continue to fulfil its mandate until it presents its final report to the Human Rights Council at its thirty-ninth session, to be followed by an interactive dialogue, and requests the presentation of that report to the General Assembly at its seventy-third session, to be followed by an interactive dialogue with the fact-finding mission;

17. *Decides* that the fact-finding mission must ensure that the large and continually increasing amount of evidence of human rights violations and abuses it has collected is fully documented, verified, consolidated and preserved in order for the material to be effectively shared, accessed and used by credible justice mechanisms, and requests the Secretary-General to allocate the resources necessary for this to be done;

18. *Strongly encourages* the Government of Myanmar to take the measures necessary to address discrimination and prejudice against women, children and members of ethnic, religious and linguistic minorities across the country, and to take further action to publicly condemn and speak out against national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and to adopt measures against incitement to imminent violence based on nationality, race or religion or belief, while upholding freedom of expression, and to increase efforts further to promote inclusion, respect for diversity and peaceful coexistence in all sectors of society, in accordance with Human Rights Council resolution 16/18 of 24 March 2011 and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by, inter alia, further facilitating interfaith and intercommunal dialogue;

19. *Notes with deep concern* that charges for criminal defamation and other offences have increasingly been used to target journalists, politicians, students and social media users for their peaceful expression, online as well as offline, in particular under section 66 (d) of the Telecommunications Act, the Electronic Transactions Law and provisions of the Penal Code, including section 505 (b), and that the Official Secrets Act, Unlawful Associations Act and the Peaceful Assembly and Peaceful Procession Law continue to be abused to arbitrarily arrest and detain individuals for exercising their rights to freedom of religion or belief, freedom of expression, and peaceful assembly and association, including on the basis of their ethnicity or political beliefs, and calls for open and participatory legislative processes to repeal or reform those laws in line with the international human rights law obligations of the Government of Myanmar;

20. *Welcomes* the release of political prisoners in accordance with the obligation of the Government of Myanmar, and calls upon the Government to ensure that no one remains in prison because of his or her political or religious beliefs, including those recently detained or convicted, human rights defenders and students;

21. *Calls upon* the Government to fulfil its commitment to release unconditionally all remaining political prisoners and to provide for the full rehabilitation of former political prisoners, and to amend restrictive laws and to end remaining curbs on exercising the rights to the freedoms of religion or belief, expression, association and peaceful assembly, which are essential to ensure a safe and enabling environment, notably for civil society, journalists, human rights defenders, lawyers, environmental and land

rights activists and civilians, and expresses concern at reports of the arrest of individuals in relation to the exercise of those rights;

22. *Expresses serious concern* about cases of reprisal as reported in relation to cooperation with the Special Rapporteur on the situation of human rights in Myanmar, while emphasizing that no one should face reprisals, monitoring, surveillance, threats, harassment or intimidation for cooperating or speaking with the special procedures of the Human Rights Council, including the Special Rapporteur on the situation of human rights in Myanmar, the independent international fact-finding mission or the United Nations, and calls upon the Government of Myanmar to take appropriate measures to prevent such acts and to combat impunity by investigating promptly and effectively all allegations of intimidation and reprisal in order to bring perpetrators to justice and to provide victims with appropriate remedies;

23. *Notes with concern* ongoing reports of land confiscation and clearance, and urges the Government of Myanmar to resolve issues of land tenure in full consultation with the affected populations;

24. *Calls upon* the Government of Myanmar to accelerate its efforts to ensure thorough, independent and impartial investigations into the killings of constitutional legal expert and senior National League for Democracy adviser Ko Ni, in January 2017, land and environmental activist Naw Chit Pan Daing, in November 2016, and journalist Soe Moe Tun, in December 2016, the rape and murder of Kachin school teachers Maran Lu Ra and Tangbau Hkawn Nan Tsing in January 2015, as well as other cases, and that those responsible are held accountable;

25. *Also calls upon* the Government of Myanmar to immediately release journalists Wa Lone and Kyaw Soe Oo; and allow unhindered access of journalists throughout Myanmar, in particular in Rakhine, Kachin and Shan States;

26. *Further calls upon* the Government of Myanmar, including its military and security forces, to take further steps to reform the Constitution and to strengthen democratic institutions, good governance and the rule of law to ensure respect for and to promote universal human rights and fundamental freedoms in accordance with international norms and standards, stresses the need for an independent, impartial and effective judiciary and an independent and self-governing legal profession, and calls upon the Government to ensure full compliance with its obligations under international human rights law and international humanitarian law, as applicable;

27. *Welcomes* the steps taken by the Government of Myanmar to prevent and end the recruitment of children, in contravention of applicable international law, and the release of more than 850 former recruited children, and, abhorring their use in Myanmar, urges the Government to consolidate progress further towards a complete cessation of all their recruitment and use; the identification of all children remaining in the ranks of government forces and their immediate release; an end to the arrest, harassment and imprisonment of children accused of desertion or association with non-State armed groups; continued efforts to bring perpetrators of child recruitment, in contravention of applicable international law, to justice and to criminalize such recruitment; increasing transparency, including by expanding access to birth registration services to children, including those vulnerable to recruitment; ensuring the rehabilitation and reintegration of formerly recruited children; and allowing ethnic armed groups to cooperate with the United Nations with a view end all recruitment and use of children;

28. *Also welcomes* the steps taken by the Government of Myanmar to ratify or accede to international human rights conventions, encourages the Government to actively consider ratifying additional international human rights conventions and the optional protocols thereto, and calls for the full implementation of the Government's obligations under international human rights law and international humanitarian law, as well as those under other relevant agreements;

29. *Recalls* the commitment of the Government of Myanmar to open a country office of the Office of the United Nations High Commissioner for Human Rights, with a full mandate and in accordance with the mandate of the High Commissioner, and

encourages the Government to issue a standing invitation to all special procedures of the Human Rights Council;

30. *Calls upon* the Government of Myanmar and its institutions to step up efforts to strengthen the protection and promotion of human rights and the rule of law and to advance democratization and inclusive economic and social development towards the achievement of Sustainable Development Goals, including by reforming the Myanmar National Human Rights Commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and calls upon the international community to support Myanmar in this regard, including through technical assistance and capacity-building programmes;

31. *Encourages* all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the Guiding Principles on Business and Human Rights, calls upon the Government of Myanmar to meet its duty to protect human rights, and calls upon home States of business companies operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction are to respect human rights throughout their operations;

32. *Welcomes* the enhanced cooperation of the Government of Myanmar with the International Labour Organization with a view to developing a decent work country programme, in which the elimination of forced labour will be included as a core component; also welcomes the recent extension, approved by the Government of Myanmar, of the supplementary understanding and action plan for the elimination of the use of forced labour to the end of December 2018, and urges its swift implementation; and encourages the Government to remain engaged in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and to begin the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in accordance with international labour standards;

33. *Calls upon* the international community to support the Government of Myanmar further, including through technical assistance and capacity-building, in the fulfilment of its international human rights obligations and commitments, the advancement of democratization and economic and social development, and the full implementation of the recommendations of the Advisory Commission on Rakhine State;

34. *Decides* to extend the mandate of the Special Rapporteur on the situation of human rights in Myanmar for a further period of one year, requests the Special Rapporteur to present an oral progress report to the Human Rights Council at its thirty-eighth session and to submit a report to the Third Committee at the seventy-third session of the General Assembly and to the Council at its fortieth session, in accordance with its annual programme of work, and invites the Special Rapporteur to continue to monitor the situation of human rights and to measure progress in the implementation of the recommendations made by the Special Rapporteur;

35. *Calls upon* the Government of Myanmar to resume without delay its cooperation with the Special Rapporteur in the exercise of the mandate, including by facilitating further visits and granting unrestricted access throughout the country, and to resume its work with the Special Rapporteur to develop a work plan and time frame for the swift implementation of the proposed joint benchmarks identified by the mandate holder in her previous report,[1] and for progress in priority areas of technical assistance and capacity-building;

36. *Requests* the Secretary-General and the High Commissioner to provide the Special Rapporteur and the independent international fact-finding mission with the assistance, resources and expertise necessary to enable them to discharge their mandates fully.

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[1] A/HRC/34/67.